



Comptroller General
of the United States

Washington, D.C. 20548

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REDACTED VERSION

Decision

Matter of: QualMed, Inc.
File: B-257184.2
Date: January 27, 1995

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DIGEST

1. Agency's methodology for assessing probable health care costs was reasonable and consistent with the evaluation criteria set forth in the solicitation.
2. Protest of the evaluation of the protester's technical proposal is denied where some of the bases of protest were not timely raised, others are without merit, and the remaining ones are so limited in scope as not to call into question the propriety of the source selection.
3. Meeting held between agency and apparent awardee immediately prior to award did not constitute improper discussions where the meeting concerned only details related to the offeror's capability to perform one aspect of its proposed solution and did not involve any modification of the proposal.

The decision issued on January 27, 1995, contained proprietary information and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions in text are indicated by "[DELETED]."

DECISION

QualMed, Inc. protests the award of a contract by the Office of the Civilian Health and Medical Program of the Uniformed Services to Foundation Health Federal Services, Inc. under request for proposals (RFP) No. MDA906-92-R-0005.¹ The RFP sought proposals to provide health care and associated administrative services in the states of Washington and Oregon for CHAMPUS beneficiaries, who include military service retirees, their dependents, and dependents of active duty members. The RFP covers a base period and five 1-year options. QualMed contends that the agency failed to properly evaluate the cost and technical proposals and conducted improper discussions with Foundation.

We deny the protest in part and dismiss it in part.

Under the RFP, offerors were required to propose three health care options to CHAMPUS beneficiaries.² Specifically, the RFP required offerors to propose a health care system under which CHAMPUS beneficiaries could opt to obtain services: (1) from providers of their own choosing on a fee-for-service basis, (2) from members of the contractor's preferred provider organization (PPO), or (3) from a contractor-established health maintenance organization (HMO).

The RFP stated that the government intended to award a fixed-price contract (with the price subject to specified adjustments during performance). The fixed-price nature of the contract, however, was modified by the risk-sharing arrangement, a key characteristic of the OCHAMPUS managed-care solicitations. Under that arrangement, in the event of health care cost overruns, the government and the contractor will share responsibility for absorbing the excess cost above a set percentage of the contract price.

¹The program is referred to as CHAMPUS and the agency as OCHAMPUS.

²Although initially issued in September 1992, the RFP was substantially revised in March 1994 in response to the decision issued by our Office sustaining a protest of the award of a contract that OCHAMPUS made under a similar solicitation for managed care services for California and Hawaii. Foundation Health Fed. Servs., Inc.; QualMed, Inc., B-254397.4 et al., Dec. 20, 1993, 94-1 CPD ¶ 3. The relevant background and statutory framework are set forth in that decision. The discussion in the current decision refers only to the revised RFP and the proposals submitted in response to it.

Responsibility will continue to be shared under a formula set out in the RFP until the contractor has absorbed overruns equal to the amount of equity that it put at risk in its proposal ("equity at risk" is thus effectively the maximum dollar amount of health care cost overruns that the contractor commits in its proposal to absorb). At that point, the contract will begin to function on a cost-reimbursement basis, with the government paying for all additional health care costs. The stage at which that conversion occurs is referred to as the point of total government responsibility (POTGR). An offeror's putting more equity at risk postpones the POTGR and is thus favorable to the government. The RFP required that offerors place a minimum of \$20 million at risk, but permitted them to exceed that minimum.³

Actual health care costs will be a function of a large number of variables, such as the number of CHAMPUS beneficiaries (and, in particular, the participation of beneficiaries in the HMO and PPO options), inflation, and the contractor's ability to manage health care utilization. The RFP explained that offerors were to propose "trend factors," with appropriate justification, for many of these variables. The trend factors were to represent the offerors' prediction of how the variables would depart from the baseline period over time.⁴

The RFP stated that the agency would construct its own estimate for all trend factors and use them to calculate an independent government cost estimate (IGCE) for health care costs. The IGCE trend factors represented the agency's estimate of the savings that an "average" contractor would achieve relative to the current situation through the shift to managed care.

³The RFP also provided that the contract price will be adjusted to reflect changes in the number of "nonavailability statements" issued for inpatient services. Such a statement is issued by a military treatment facility that is unable to provide health care services needed by a beneficiary; receipt of the nonavailability statement effectively authorizes the beneficiary to go to a civilian health care provider. This contract price adjustment was discussed in our decision of a protest filed by QualMed challenging the terms of this solicitation. QualMed, Inc., 73 Comp. Gen. ____ (1994), 94-2 CPD ¶ 33.

⁴The baseline period, which represented the current situation, was referred to as the data collection period (DCP).

The RFP distinguished between trend factors over which the contractor was likely to have control (such as utilization management and the percentage of beneficiaries participating in the HMO and PPO options) and those over which the contractor was unlikely to have control (such as inflation). The RFP advised offerors that the agency would substitute its IGCE factors for those proposed by offerors in the case of the uncontrollable trend factors.

With respect to the trend factors under the contractor's control, the RFP committed the agency to evaluating the realism of each proposed factor, based on a comparison with the government estimate for those factors and the agency's judgment about "the likely trends under the offeror's approach." That is, OCHAMPUS would not simply substitute its IGCE figures for the offeror's controllable trend factors; instead, the agency would assess the realism of each proposal's estimates for the various controllable cost factors based on the technical approach set forth in the proposal.⁵ The agency would then adjust the offeror's proposed figures to reflect the agency's judgment about probable trends under the offeror's approach. The total probable health care cost for a proposal would be the offeror's proposed health care cost, as modified by those adjustments, if any, as well as the adjustments arising from the replacement of every offeror's figures with the IGCE figures for trend factors outside the contractor's control.

The RFP explained that, after calculating the total probable cost to the government for each proposal (including the fixed-price administrative area and health care profit), the agency would estimate the cost to the government of various percentages of overruns and underruns relative to that probable cost. The resulting calculation would lead to a further adjustment to the total probable cost for the proposal through the addition of a "risk premium." The amount of equity proposed by an offeror would affect the size of the risk premium, since a contractor's putting more equity at risk would postpone the POTGR, thus relieving the government of a portion of the cost of the overruns.

⁵One of the grounds for our sustaining the protest in the California/Hawaii procurement was the agency's unjustified rejection of offerors' estimates for all trend factors (including those under the contractor's control), and their replacement by the IGCE factors in the calculation of expected overall health care costs; this represented an unsupported assumption that trend factors, and therefore health care costs, would be identical for every offeror. Foundation Health Fed. Servs., Inc.; QualMed, Inc., supra.

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The RFP stated that, in the selection of an awardee, technical content would be more important than cost. Specifically, the weighting ratio was set out as 60 percent for technical and 40 percent for cost. The technical score was the result of the evaluation of the 13 tasks that are to be performed, plus experience and performance, treated as an additional task. In calculating total technical scores, the agency weighted the scores for individual tasks according to the weighting scheme set out in the RFP.

Three proposals were received by the April 29, 1994, due date.⁶ After discussions were held, the agency requested that offerors submit best and final offers (BAFO) by July 25. In evaluating BAFOs, the agency concluded that Foundation's merited the highest technical score. Specifically, Foundation's proposal was assigned a total technical score of 602.679 weighted points; QualMed's score was 580.685, approximately 22 points lower.

The two offerors' proposed health care costs were relatively close, with Foundation's slightly lower ([DELETED] million for Foundation vs. [DELETED] million for QualMed). Although both offerors' proposed health care costs were raised through the substitution of the IGCE figures for the trend factors not under the control of the contractor, most of Foundation's proposed numbers for the controllable trend factors were also rejected and adjusted upward (that is, the estimated probable cost was increased). For QualMed, however, the agency accepted the proposed figures for the controllable trend factors in the majority of cases, with the result that QualMed's evaluated health care costs were closer to those proposed than was the case for Foundation. Consequently, with the adjustments added in the evaluation process (for both controllable and uncontrollable trend factors), Foundation's total probable health care cost was assessed as higher than QualMed's ([DELETED] million for Foundation vs. [DELETED] million for QualMed). Because Foundation put less equity at risk and the agency estimated that Foundation's cost would probably be closer to the POTGR than would QualMed's, the agency also added a substantially greater risk premium to Foundation's total probable cost, hence increasing QualMed's cost advantage by a further [DELETED] million.

Foundation's proposal nonetheless achieved an overall cost advantage due to health care profit and the fixed-price administrative work, which together amounted to [DELETED] million for Foundation, but [DELETED] million for QualMed. Once those figures were added in, despite QualMed's lower

⁶Because the third proposal is not relevant to the protest, we do not discuss it here.

probable health care cost, Foundation achieved a substantial cost advantage: The total expected cost of Foundation's proposal was calculated as [DELETED] million, while QualMed's was [DELETED] million, approximately \$36 million more. On the basis of the determination that Foundation offered a higher-rated technical product at a lower expected cost to the government, Foundation's proposal was selected for award, which occurred on September 6.

In the course of the protest proceedings, QualMed has raised numerous challenges to the conduct of the procurement. The initial protest, which was filed on September 15, 1 day before QualMed's debriefing, essentially repeated the allegations that led our Office to sustain the challenge to the award in the California/Hawaii procurement: OCHAMPUS allegedly failed to evaluate technical and cost proposals in accordance with the RFP evaluation criteria and failed to make a meaningful assessment of the ability of the offerors to perform in the manner prescribed in their proposals.

In its November 7 comments on the October 24 agency report, QualMed modified its initial protest grounds and raised several new issues. Further grounds of protest were raised in a supplemental filing on November 16. Foundation and the agency argue that many of the November 7 and November 16 protest grounds should be dismissed as untimely, since they were filed more than 10 working days after QualMed received its debriefing, and the November 16 grounds were raised more than 10 days after receipt of the agency report. See 4 C.F.R. § 21.2(a)(2) (1994). Although our Office will consider a request for partial summary dismissal where individual protest grounds are untimely or otherwise not for consideration, here we withheld ruling on the request for dismissal pending clarification of the record. As explained below in the discussion of individual protest grounds, we conclude that some of the allegations were not timely raised.

DISCUSSION

Challenges to the Cost Evaluation

Our Office will not question an agency's evaluation of proposals unless the agency deviated from the solicitation evaluation criteria or the evaluation was otherwise unreasonable. Payco Am. Corp., B-253668, Oct. 8, 1993, 93-2 CPD ¶ 214. The fact that a protester disagrees with the contracting activity's judgment does not establish that the evaluation was unreasonable. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450.

QualMed contends that Foundation provided so little support for its proposed trend factors that the agency was required

by the RFP terms to reject the proposal entirely. Further, even if Foundation's proposal was properly accepted, QualMed argues that the trend factors which the agency substituted for those contained in Foundation's proposal were assigned arbitrarily. Since, as explained above, the total probable health care cost for each proposal was mainly a function of the projected trend factors, QualMed contends that the agency's projection of Foundation's total health care costs should have been viewed as considerably more unreliable than the projection for QualMed.

We find without merit the argument that OCHAMPUS was required to reject Foundation's proposal due to the inadequate support provided for its proposed trend factors. The RFP stated that the agency "expects the offeror to include [justification for figures proposed for trend factors within the control of the contractor] in its proposal. Failure to provide adequate justification will adversely impact the offeror's evaluate[d] price." The agency's action was fully consistent with this provision: Foundation's evaluated health care cost was adversely affected--that is, substantially increased--due to the agency's determination that Foundation had not adequately justified many of the claimed trend factors.

In the instances where OCHAMPUS determined that Foundation had not sufficiently supported its proposed trend factors, the agency generally substituted either the IGCE trend factor or a figure between the IGCE and Foundation's number. The result was that the agency adjusted Foundation's proposed health care cost upward by more than [DELETED] million.⁷ Rather than evidencing a deviation from the solicitation criteria, this demonstrates that the agency performed the individualized evaluation, particularly with respect to the assessment of proposed trend factors, that was essential in order for the overall process to be rational and consistent with the RFP. See Foundation Health Fed. Servs., Inc.; QualMed, Inc., supra.

QualMed appears to believe that the process would be rational only if the agency developed a specially calculated figure to replace each of Foundation's factors that was not adequately supported. We disagree. In determining the probable figure for each trend factor, the evaluators chose among a limited number of possibilities ([DELETED]). QualMed criticizes the limited number of choices as arbitrary. In our view, the agency's approach was similar

⁷As noted above, QualMed's proposed health care cost was adjusted upward far less, and primarily as a result of the substitution, pursuant to the RFP, of the IGCE figures for the trend factors that the contractor could not control.

to a rating system in which a feature in a proposal must be assigned a score of 1, 2, 3, 4, or 5, with no possibility of fractional scores in between. While such a system is not perfectly precise, it is not unreasonable. Developing precise numbers here would have been an immense undertaking of questionable value. There were hundreds of specific trend factors to be evaluated in each proposal; for each controllable trend factor, such as utilization management, there were permutations for a substantial number of variables (for example, option year 1 vs. other years, active duty dependent vs. non-active duty dependent, inpatient vs. outpatient, medical/surgical vs. mental health). Moreover, since the figures selected here were predictions of future events that are by their nature uncertain (for example, the number of active duty dependents who would be admitted to hospitals for surgical procedures in the fifth year of the contract), there would be no reasoned basis to impose further precision.

Further, QualMed has not explained how it was prejudiced by the agency's use of a limited range of possible numbers in the adjustment of controllable trend factors. Prejudice is an essential element of a viable protest. Lithos Restoration, Ltd., 71 Comp. Gen. 367 (1992), 92-1 CPD ¶ 379. QualMed has not shown that the agency's projection of the total probable health care cost for Foundation would have been adjusted upwards more than it already was (or that QualMed's would have been reduced) if the agency had devoted the effort that would have been required to develop hundreds of individually tailored trend factors, rather than having the evaluators choose between a consistently applied limited number of options.

The one specific circumstance where QualMed does claim prejudice from the agency's methodology is with regard to trend factors where OCHAMPUS determined that Foundation would probably achieve some improvement over the baseline (DCP) period, even though not as much as Foundation claimed, and the agency therefore assigned Foundation the IGCE factor (or a figure between the IGCE and the DCP), rather than the less favorable DCP baseline. This approach helped Foundation, since it led to a lower total probable health care cost than if the agency had determined that Foundation would achieve no savings over the baseline figures. We find the agency's approach reasonable, since the IGCE was developed to reflect the savings that any contractor was likely to achieve as a result of the shift to managed care. Other than in its general argument that OCHAMPUS could not predict the level of savings that Foundation would achieve, QualMed has not explained why, for any particular trend factor, it was unreasonable for the agency to conclude that

Foundation would achieve the moderate IGCE savings over the DCP.⁴

QualMed also argues that the final figure for Foundation's total probable contract cost should have been viewed as entailing greater risk for the government than QualMed's. In addition to the fact that the agency substituted trend factors for those proposed by Foundation, QualMed points out that Foundation offered a lower amount of equity at risk than QualMed and that, according to the agency's calculations, Foundation would be closer to the POTGR than would QualMed.

The agency views the health care cost figure it calculated for each proposal, QualMed's and Foundation's, as its best estimate of the cost of health care under that proposal and therefore as essentially equally reliable for both offerors. Because it rejected more proposed trend factors in calculating Foundation's number than in QualMed's (due to Foundation's providing less support for its proposed factors), the agency already took the uncertainty concerning Foundation's factors into account by increasing Foundation's probable health care cost considerably more than QualMed's. QualMed would have OCHAMPUS make a further adjustment by finding that Foundation is likely to exceed even the agency's predicted probable cost figure. We reject this argument because we see no reason to assume that the agency's best estimate of Foundation's total probable health care cost is low or otherwise less reliable than its estimate of QualMed's likely health care cost.

Concerning the question of risk, the potentially greater exposure of the government under Foundation's proposal was taken into account through the assessment of risk premiums. As explained above, the agency added a substantially greater risk premium to Foundation's probable cost than to QualMed's, because Foundation proposed less equity at risk and its probable cost was estimated to be closer to the POTGR. In our view, the risk premiums constituted a reasonable mechanism to take the risk to the government into account, and it fulfilled that function adequately here. We see no rationale for requiring any additional adjustment or further mechanism to account for risk.

In sum, after careful review of both the overall cost evaluation methodology and the details of the evaluation of

⁴In any event, OCHAMPUS did not automatically assign Foundation the IGCE trend factors in every case, but only where the agency concluded that the offeror would probably attain the IGCE level; in other instances, a different trend factor was assigned.

QualMed's and Foundation's cost proposals, we conclude that the agency's evaluation was reasonable and consistent with the solicitation. Accordingly, the protest of the cost evaluation is denied.⁹

Challenges to the Technical Evaluation

As noted earlier, OCHAMPUS found that Foundation's proposal was technically superior to QualMed's, as reflected in a 22-point advantage in favor of Foundation points out of the approximately 600 weighted technical points that each

'We briefly address here several miscellaneous challenges that QualMed raises regarding the cost evaluation. The protester alleges that the cost evaluation was distorted because of unreasonable criticism by the technical evaluators of QualMed's capabilities, particularly in the area of utilization management. We reject this allegation as factually unfounded, since the relatively few instances in which the cost evaluators rejected QualMed's trend factors were largely justified on grounds independent of the technical evaluation. For example, the cost evaluators rejected some of QualMed's claimed savings in the area of utilization management where [DELETED].

QualMed also argues that it received inadequate credit for [DELETED]. QualMed has not demonstrated that the agency was required to give the firm further credit in this area, and we see nothing unreasonable in this aspect of the evaluation.

In the area of the sharing of resources between the contractor and military treatment facilities, QualMed disputes the reasonableness of the agency's reducing the amount of its anticipated savings for [DELETED]. In our view, the argument lacks a factual basis, since the agency gave QualMed full credit for [DELETED].

Finally, QualMed argues that the agency conferred a "gift" on Foundation by giving it credit for substantial resource sharing savings not claimed by Foundation. The agency and Foundation respond that the RFP had not informed offerors whether resource sharing should be identified in gross terms (that is, showing both the total amount of planned investment in this area and the total amount of anticipated savings) or as a net figure (showing only the net savings). QualMed used the gross approach, while Foundation adopted the net approach. For consistency and ease of evaluation, the agency adjusted Foundation's figures, adding an essentially equal amount of cost and savings. QualMed has not disputed the accuracy of this explanation or shown that this action by the agency was unreasonable.

proposal received. QualMed disputes the evaluation of only 3 of the 13 tasks covered by the technical proposals; health care providers (including utilization management), program integrity, and management. All told, the protest concerns nearly a dozen individual ratings, several of which concern less than a point each and which cumulatively call into question the assignment of some 27 weighted technical points under those 3 tasks. QualMed also contests the agency's evaluation of the offerors' CHAMPUS and Medicare experience.¹⁰

The technical evaluation was not without flaws. For example, the agency concedes two clerical errors (accounting together for 2 weighted technical points) that overstated Foundation's score. On the other hand, there were three clerical errors (accounting cumulatively for 1 weighted point) that understated Foundation's score or overstated QualMed's.¹¹ The net effect of correcting these errors is thus to add 1 weighted point to QualMed's score.

A more significant error may have occurred in the evaluation of offerors' "measurable goals" in the utilization management area (a term used, but not defined, in the RFP). In response to a written question from the technical evaluators asking the two offerors about their "measurable goals" in this area, both provided narrative; Foundation also submitted a photocopy of the utilization management trend factor figures from its cost proposal, which appear to have favorably impressed the evaluators. In response, Foundation's proposal was rated satisfactory, while QualMed's was rated unsatisfactory.¹² At the hearing, the evaluator responsible for this area suggested that what the technical evaluators were looking for was numbers, and Foundation's trend factor figures provided them. He was unable to recall whether the technical evaluators realized that QualMed (and every other offeror) must have provided

¹⁰Under the agency's evaluation scheme, a maximum of [DELETED] weighted technical points were available for CHAMPUS and Medicare experience.

¹¹In each of these errors, the evaluators' numerical scores failed to reflect the ratings set forth in the narrative. QualMed disputes the reasonableness of the narrative ratings where the clerical error resulted in numerical scores more favorable to QualMed than the narrative. We have reviewed each instance and find that QualMed is simply disagreeing with the agency's judgment, which we find to be reasonable and consistent with the solicitation criteria.

¹²This difference accounts for [DELETED] weighted technical points.

equally detailed figures for the utilization management trend factor in the cost proposal. To the extent that the two proposals were treated differently because the evaluators did not realize that all cost proposals contained equally detailed numbers under the utilization management trend factor, the evaluation was not reasonable.¹³

Correcting the clerical errors and equalizing the scores for measurable utilization management goals would reduce Foundation's advantage to [DELETED] weighted technical points. The balance of QualMed's protest, however, does not raise timely, meritorious protest grounds adequate to call into question the remaining evaluated technical point-score advantage of Foundation's proposal.

Specifically, QualMed's challenge to the evaluation under two management criteria--together accounting for [DELETED] points--was clearly not timely raised. QualMed disputes the assignment of slightly more than [DELETED] weighted technical points under the criterion for program capability and somewhat less than [DELETED] points under the criterion for management controls. Essentially, the agency downgraded QualMed's proposal due to lack of clarity about the proposed staffing levels in various functional areas, particularly utilization management personnel, health care finders, and mental health staff. QualMed argues that the criticisms do not relate to management and are irrelevant to the evaluation of the offeror's proposed management; that the criticisms have no basis in fact, since its proposal was clear regarding staffing and actually received praise from the evaluators for the [DELETED] proposed staff; and that the criticisms reflect unequal treatment because, if the agency had applied a similar standard to Foundation's proposal, its rating under these criteria would have dropped.

Where a protester files supplemental protest grounds, each new ground must independently satisfy the timeliness requirements of our Bid Protest Regulations, which do not contemplate the piecemeal presentation or development of

¹³The agency and Foundation argue that it was the narrative expressing Foundation's commitment to the numbers that made the difference. Our review of the record, however, confirms our concern that the technical evaluators may have been acting under a misapprehension. The agency and Foundation also contend that this issue was not timely raised, since it concerns QualMed's rating. We view this issue as an allegation of unequal treatment, and it is therefore timely, since it was raised within 10 days of QualMed's learning how Foundation's proposal was treated in this regard. 4 C.F.R. § 21.2(a)(2).

protest issues with the possible resulting disruption of the procurement of goods and services. Booz, Allen & Hamilton, Inc., B-249236.4; B-249236.5, Mar. 5, 1993, 93-1 CPD ¶ 209. Each of QualMed's supplemental protest grounds, to be timely, must therefore satisfy the timeliness standards under our Regulations, which for protests based on other than an alleged solicitation impropriety require that the protest be filed within 10 working days after the protester knows or should have known the basis for protest. 4 C.F.R. § 21.2(a)(2). This is true even though the supplemental protest grounds may be, as QualMed asserts, merely "examples" of flaws in the evaluation generally alleged in the initial protest or the November 7 comments on the agency report. QualMed's staggered presentation of such "examples," each of which involves different factual circumstances and requires a separate explanation from the agency, constitutes precisely the piecemeal presentation of issues that our timeliness rules do not permit.

QualMed first challenged the ratings assigned under these two management criteria in its November 16 filing. It did not explain in that filing (nor has it explained since then) why the challenges to these two ratings should be viewed as timely. See 4 C.F.R. § 21.2(b) (protester is required to include in its protest all the information needed to demonstrate its timeliness). QualMed learned, or could have learned, of the protest grounds related to the agency's evaluation of its and Foundation's proposals under these criteria through receipt of the agency report on October 24. Indeed, as to the evaluation of its own proposal, QualMed learned the basis of protest at its September 16 debriefing.¹⁴ Because QualMed learned the basis of protest in September or, at the latest, on October 24, we dismiss the [DELETED]-point challenge to the evaluation under these two management criteria as untimely.

QualMed does raise a timely challenge to the evaluation of proposed methods for retrospective review of decisions regarding the use of health care, an important tool for improving utilization management. The solicitation imposes on the contractor the obligation of determining deviations

¹⁴The transcript of the debriefing contains the following discussion in which the agency explained its evaluation of QualMed's proposal in this area:

"Under [the management] Task, . . . there were difficulties and weaknesses in the area of . . . program capability, . . . management controls, and . . . management planning and performance. . . . There was confusion in your proposal, from our review standpoint [DELETED]."

from statistical utilization norms. QualMed claims that the agency treated the offerors unequally by assigning different scores to their essentially equal discussion of the methodology for determining these deviations.

QualMed was asked to address this issue during discussions, and the evaluators found QualMed's response unsatisfactory due to the absence of discussion of procedures that will be used. Foundation's proposal was rated satisfactory in this area, and it therefore was not raised during discussions.¹⁵

In QualMed's view, its capability in using data analysis for utilization management is one of the firm's "core strengths" and that capability is "reflected throughout QualMed's proposal." QualMed argues that Foundation's proposal offered no more discussion of procedures for statistical analysis and could therefore not have merited a higher rating. As the justification for the different scores, the agency points to several discussions in Foundation's proposal, including, for example, an explanation of how deviations in utilization from statistical norms will be analyzed in various contexts. We have reviewed the proposals and the evaluation worksheets and, while the two proposals are not radically different in this respect, we conclude that the disagreement between QualMed and the agency about the quality of the discussion in each proposal is essentially one of technical judgment, which does not establish that the agency's assessment was improper. See ESCO, Inc., supra. There is no evidence that the agency treated the offerors unequally or that the agency's judgment was unreasonable or inconsistent with the solicitation criteria. Accordingly, we deny this protest ground.

In the evaluation of program integrity, QualMed's proposal was downgraded because the proposal did not distinguish between individuals handling fraud and abuse cases and those working on utilization management. The agency had concern about whether adequate resources were being proposed for managing fraud and abuse cases.

QualMed learned at the September 16 debriefing that the agency assigned a weakness to QualMed's proposal due to its failure to indicate the extent to which the staff would be handling program integrity rather than utilization management; that issue, which was first raised more than 10 days after September 16, is thus untimely.

As to unequal treatment, which the protester could not raise until after review of the documentation relating to the

¹⁵Foundation's proposal received [DELETED] weighted technical points more than QualMed's in this area.

evaluation of Foundation's proposal, QualMed contends that the offerors were treated differently, because Foundation was not downgraded, even though it proposed to have supervisors handling both fraud cases and utilization management.¹⁶ Foundation responds that a senior manager's having responsibility for more than one area is readily distinguishable from the agency's concern about the amount of human resources actually working on fraud cases, and the agency reasonably had concern because it could not learn from QualMed's proposal the staffing that QualMed proposed for work on fraud cases. We agree and therefore deny the allegation of unequal treatment in this area.

Concerning experience and performance, QualMed challenges the evaluation of relevant CHAMPUS and Medicare experience, for which a total of [DELETED] weighted points was theoretically available.¹⁷ In particular, the protester disputes the assignment of [DELETED] points to QualMed for CHAMPUS and Medicare experience and [DELETED] points to Foundation for CHAMPUS experience (Foundation received [DELETED] for Medicare experience). It contends that it should have been awarded an unspecified number of points for the CHAMPUS and Medicare experience of what it refers to as QualMed's "team" and that Foundation should have received fewer points.

QualMed concedes that it "has no experience as a CHAMPUS fiscal intermediary or as a CHAMPUS contractor or as a Medicare Part A intermediary or Medicare [Part] B carrier." It contends, however, that its "subcontractors have an extraordinary amount of experience" and that the agency was required to give QualMed credit for its proposed

¹⁶QualMed would increase its proposal's score and decrease Foundation's, thus shifting the proposals' relative standing by approximately [DELETED] weighted technical points in QualMed's favor due to this issue.

¹⁷This issue, which QualMed first raised in its November 7 comments, does appear to be timely, since QualMed first learned that it was not given credit for CHAMPUS or Medicare experience when it received the agency report on October 24 (the matter was not disclosed during the September 16 debriefing). However, in its December 28 post-hearing brief, QualMed alleged, for the first time, that the agency deviated from the RFP by evaluating and scoring CHAMPUS and Medicare experience separately from other experience. QualMed does not explain why this new protest ground, which appears on its face to be untimely, should be considered. We therefore dismiss the new allegation as untimely raised. 4 C.F.R. § 21.2(a)(2).

subcontractors' experience in this area. Some of the experience that QualMed cites is that of [DELETED].

The parties disagree about whether OCHAMPUS was required to take subcontractors' experience into account and whether QualMed's subcontractors have the experience claimed. In addition to admitting its own lack of experience, QualMed concedes that the solicitation did not ask for information about subcontractors' Medicare experience (although it did ask for subcontractor information for other areas). QualMed also does not dispute that, while the RFP required offerors claiming Medicare experience to submit current performance reports, neither QualMed nor any of its proposed subcontractors did so.

Under these circumstances, QualMed cannot reasonably claim that it should have received more points than Foundation, which has extensive CHAMPUS experience and has thus far apparently performed successfully.¹⁶ Foundation would retain a significant advantage in technical points even if the two offerors' CHAMPUS and Medicare experience were assumed to be equal. In fact, giving QualMed credit for equality in that area (that is, increasing its score by [DELETED] weighted technical points) and then raising QualMed's score by resolving all the remaining disputes regarding the technical evaluation in its favor (accounting for approximately [DELETED] points) would not bring its technical score up to that of Foundation, which would retain an advantage of approximately 5 weighted points. Moreover, even if QualMed's technical proposal were assumed to be equal in merit to Foundation's, Foundation's proposal would nonetheless be in line for award due to its cost advantage. Accordingly, the selection of Foundation's proposal was reasonable notwithstanding the errors that may have occurred in the technical evaluation.

Challenges to the Final Source Selection Process

The protester contends that the agency had unreasonable doubts about the QualMed proposal's viability, and that this prejudiced its chances of selection. The record does indicate that the agency perceived as a risk the substantial amount of work that QualMed and its subcontractors would need to perform in order to have a single, triple-option claims processing system ready in time for performance. QualMed initially advised OCHAMPUS that a specific number of hours of work (in excess of [DELETED] hours) would be needed

¹⁶While QualMed points to reported problems in Foundation's performance, there is no evidence that any problem has prevented, or threatened to prevent, successful contract completion.

to adapt existing claims processing software to the RFP requirements; at BAFO, QualMed revised that figure to a specific number of hours that remained in excess of [DELETED] hours. The agency, while generally confident about the capabilities of QualMed and its proposed subcontractors, had concern about whether even that reduced amount of work could be successfully completed in time for performance to begin as scheduled. QualMed contends, however, that most of the work on the software was already being performed by [DELETED] and that OCHAMPUS personnel knew this.

Essentially, QualMed is arguing that its proposal overstated the number of hours of work that remained to be performed adapting the software and that the agency should have discounted the contents of the proposal in this regard. We fail to see why the agency should be faulted for accepting QualMed's proposal at face value. QualMed has offered no rationale that would require the agency to ignore QualMed's proposal in favor of information that the protester now claims was available to the agency about the QualMed team, but which QualMed itself never brought to the agency's attention.

In any event, this matter did not prejudice QualMed. While the evaluation documents do identify a risk arising from QualMed's needing this substantial amount of work performed adapting the software at the beginning of the contract, the evaluated risk did not affect either the technical or the cost evaluation.¹⁹ We conclude that the risk determination, while it was reasonably based on QualMed's proposal, had no impact on the source selection.

Concerning Foundation's ability to deliver a claims processing system with triple-option software, QualMed alleges that the agency improperly accepted at face value Foundation's claim that it would have such a system in place in time for performance. QualMed also claims that a meeting held between OCHAMPUS and Foundation personnel on September 5 constituted improper post-BAFO discussions at which Foundation was permitted to modify its proposal in order to make it technically acceptable.

In this procurement, offerors were not required to have the triple-option software on hand at the time of proposal submission or award. Instead, the successful contractor was required to have a functioning system within 6 months after

¹⁹Since it relates to QualMed's ability to perform, it might have affected a responsibility determination, which would have been needed if QualMed had been selected for award. See Federal Acquisition Regulation (FAR) Subpart 9.1.

award. Foundation proposed an acceptable system, and QualMed has proffered no evidence to suggest that Foundation will not be able to have a functioning system in place within 6 months of award.

While OCHAMPUS met with Foundation personnel on September 5, after evaluation of BAFOs and prior to award, the record indicates that the meeting concerned primarily one subject, the location of Foundation's claims processing personnel and Foundation's ability to begin processing claims at that location within the time frame set in the RFP. Foundation's BAFO stated that the personnel would be located in one of two remote locations (that is, locations separate from Foundation's facilities). The absence of an identified location, while not in contravention of RFP requirements, caused some concern for OCHAMPUS personnel. They initiated the meeting in order to assure themselves of Foundation's capability to perform at the remote location.²⁰ OCHAMPUS states that the September 5 meeting consisted of routine pre-award survey matters regarding the capability of the selected awardee to perform. See FAR Subpart 9.1.

QualMed does not contest the feasibility or propriety of using a remote location for claims processing, a fairly standard practice in the industry. Instead, QualMed alleges that OCHAMPUS used the meeting to obtain information essential to determining the acceptability of Foundation's proposal in the area of claims processing, and permitted Foundation to change its proposal in this regard. If these allegations were well founded, the meeting would have constituted discussions, thus triggering the requirement that another round of BAFOs be solicited from all offerors with proposals in the competitive range. FAR §§ 15.601; 15.611(c).

The facts, however, do not support the allegations. While QualMed asserts that it was "essential to the evaluation of an offeror's proposal" that "a definitive location for an offeror's claims processing activities" be established, nothing in the RFP supports that assertion. Instead, the RFP provisions relied on by QualMed state merely that the offeror must propose plans and procedures to have the claims processing system operational in time for benchmark testing and that the contractor will be responsible for maintaining adequate staffing and support for claims processing from the first day of delivery of health care services. Neither provision establishes, or even suggests, that offerors were required to identify a specific claims processing site in

²⁰At the meeting, OCHAMPUS representatives also asked about which support functions (such as correspondence and microfilming) would be located at the remote location.

their proposals. During the evaluation of proposals, which was completed before September 5, OCHAMPUS had found Foundation's claims processing proposal acceptable, and nothing in the meeting that occurred on that date was necessary to a determination about the acceptability of the proposal.

QualMed nonetheless argues that Foundation "in effect" modified its proposal as a result of the September 5 meeting by arranging to have the system benchmarked at its headquarters if the remote location were not ready in time. The record does not indicate that Foundation arranged to conduct the benchmarking at its headquarters. According to the contracting officer's uncontroverted contemporaneous record of the meeting, Foundation simply "committed to process claims at its headquarters if the remote site was not operational in time." This commitment, which relates to the firm's capability to perform the contract, constitutes neither a modification of the proposal nor information needed to determine the proposal's acceptability. Accordingly, we conclude that the agency did not conduct improper post-BAFO discussions.²¹

The Objectivity of the Evaluation

In the pleadings submitted during the protest, QualMed challenged the objectivity and competence of many of the agency personnel involved in the procurement. The protester seized on notations, omissions, and clerical errors in the evaluation paperwork as evidence of an effort by OCHAMPUS to avoid award to QualMed. This pattern culminated in QualMed's January 4, 1995, post-hearing reply brief, where the protester asserted that the agency's "actions in this procurement are consistent with the notion that someone wanted a 22-point differential between the Foundation and QualMed technical proposals."

To the extent that these intimations of impropriety state a basis of protest, it is as an allegation of bad faith or bias on the part of OCHAMPUS. There is no basis in the

²¹Concerning the source selection itself, QualMed argues that the source selection authority (SSA) was not provided accurate information about the way in which the total probable health care cost for each proposal had been calculated or about the content of the proposals and their relative merits and risks. This issue was explored in some depth at the hearing, where the SSA was a witness. His testimony demonstrated that he was provided the accurate information that QualMed asserts was withheld from him, and we therefore conclude that this protest lacks a basis in fact.

record for such an allegation. The record in this matter included voluminous contemporaneous documentation, extensive pleadings, and the transcript of a 4-day hearing, at which the protester was afforded ample opportunity to question the government employees who evaluated proposals and selected the awardee. That record disclosed no evidence that the agency acted with the intent of hurting the protester, which must be shown in order to support an allegation of bias or bad faith. Group Technologies Corp.; Electrospace Sys., Inc., B-250699 et al., Feb. 17, 1993, 93-1 CPD ¶ 150. Such intent was not established by the clerical or other errors (indeed, as explained above, some of the clerical errors were in QualMed's favor) nor by any other aspect of the agency's conduct of this procurement.

The protest is denied in part and dismissed in part.

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General Counsel